

1 A. I'm not sure if it was my mom who circled or the teacher
2 who circled, but there were no tutorials that were indicated.

3 Q. Fair enough. So whether it was your mom or your teachers,
4 nobody apparently believed you needed tutorials at that point
5 in your education?

6 A. Apparently not.

7 Q. Then we get to your grades on the next page.

8 Would you agree with me in grade 3, you had all A's?

9 A. Where?

10 Q. On the left side for your academic areas. For your final
11 grades?

12 A. Yes.

13 Q. And then one of your academic areas was reading, where you
14 achieved grades of 86, 91, 93, 92, 96 and 96.

15 And those were all grades that you received certainly
16 without any formal accommodations?

17 A. Yeah, without formal accommodations.

18 Q. Now, this is an interesting report card, because it
19 indicates whether you're receiving additional classroom
20 supports.

21 So look at the right, if you would, where's there's a
22 reference to additional programs and support.

23 A. Okay.

24 Q. And was there any indication at this time that you were
25 taking any classes in the learning center?

- 1 A. No.
- 2 Q. Was there any indication that you were getting specialized
- 3 reading support from anyone?
- 4 A. There are no check marks in that area, so no.
- 5 Q. And was there any indication that your grades were based
- 6 on intensive teacher assistance?
- 7 A. Again, there's no check marks in any of those, so no.
- 8 Q. And this is one of the grades where you testified you were
- 9 receiving special assistance from your teachers on virtually a
- 10 daily basis?
- 11 A. Yes. I was still receiving help then.
- 12 Q. Is there any indication at this time that you were getting
- 13 special tutoring?
- 14 A. No.
- 15 Q. Look at DX-14, which is your fourth grade report card
- 16 while you were at Carrollton?
- 17 A. Okay.
- 18 Q. Did anyone indicate, either your mother or your teachers,
- 19 that tutorials were needed when you were in the fourth grade?
- 20 A. The only one that's circled is for the number 2, which is
- 21 no. For the rest, I can't say.
- 22 Q. There are no yeses circled, are there?
- 23 A. No.
- 24 Q. Then on the second page are your grades from grade 4.
- 25 A. Okay.

1 Q. And you had straight A's as your final grades for this
2 academic year as well?

3 A. Yes.

4 Q. Again, your reading level was shown to be on level for all
5 semesters, for all parts of the calendar year; is that correct?

6 A. Yes.

7 Q. And your reading grades were -- the last two were 94 and
8 94?

9 A. Yes.

10 Q. And again, if we can go to the additional program support,
11 there's nothing here indicating that you were getting
12 specialized reading support; is that correct?

13 A. That's correct.

14 Q. And nothing indicating that your grades were based on any
15 sort of intensive teacher assistance. Correct?

16 A. That's correct.

17 Q. And the one thing that is indicated here is the ACE is
18 circled, and that's a reference to I believe the accelerated
19 program in math that you testified to earlier?

20 A. Yes.

21 Q. DX-15. I believe this is the year that you testified that
22 you moved -- fifth grade you moved from Texas to Michigan.

23 Is this the report card from the first half of your school
24 year when you were still in Texas?

25 A. Yes.

1 Q. And are those your grades on the second page there for the
2 first two -- I don't know, what do they call them, semesters,
3 but the first two parts of the academic year when you were
4 still at Carrollton?

5 A. Yes.

6 Q. At that time your reading grades it looked like were 97
7 and 94?

8 A. Yes.

9 Q. And on the right side, was there any indication that in
10 the fifth grade you were receiving specialized reading support?

11 A. No.

12 Q. And again, no indication you were getting intensive
13 teacher assistance?

14 A. No.

15 Q. Defendant's Exhibit 16. This is your report card from St.
16 Joseph's Public School at Brown Elementary School for the
17 second half of grade 5; is that correct?

18 A. Yes, I believe so.

19 Q. Is it correct, you have straight A's on the right side?

20 A. A's and A minuses and O.

21 Q. And O stands for outstanding; is that correct? The key to
22 the grades, middle of the page, bottom.

23 A. Yes.

24 Q. Do you see there's some comments provided on the second
25 semester next to your language course, there's a comment, and

1 just there's a little code, it says O under COM? And you see
2 the comments are at the bottom?

3 A. Okay.

4 Q. And O stands for excellent study skills?

5 A. Okay.

6 Q. What class was that?

7 A. I would assume language arts.

8 Q. And then your reading grade was an A?

9 A. Yes.

10 Q. And you were not receiving any type of formal
11 accommodations from the school at that time?

12 A. No formal accommodations, no.

13 Q. And this was a public school?

14 A. Yes.

15 Q. So to your knowledge, did they have individual education
16 programs available for students?

17 A. I would assume so.

18 Q. Look at the last page on this document, which are comments
19 from your teachers.

20 A. Okay.

21 Q. Second marking period: Jessica is doing beautiful work in
22 all subject areas!

23 Then the fourth period: You're doing fine work in all
24 subject areas all semester. Jessica, congratulations for
25 winning second place in the original book category and expo.

1 Keep on writing creatively and consider working on the school
2 paper.

3 And is it your testimony that this was a time when you
4 were struggling with reading and writing at school?

5 A. Yes.

6 Q. Exhibit 17 is your report card from grade 6. Looks like
7 you're now at Upton Middle School?

8 A. Yes.

9 Q. And did you have straight A's both semesters in the sixth
10 grade?

11 A. A's and A minuses, yeah.

12 Q. And again, this was at a time when you were not receiving
13 any formal accommodations from the school?

14 A. Correct.

15 Q. Exhibit 18, is this a report card reflecting your grades
16 from grades 9, 10, 11 and 12, so basically your high school
17 grades from St. Joseph's High School?

18 A. Yes.

19 Q. And it shows that -- it looks basically like you have all
20 A's and an occasional B plus; is that correct?

21 A. I see several B's and B pluses and B minuses.

22 Q. I see one B minus.

23 In any event, all A's and B's?

24 A. Yes.

25 Q. And your final grade point average was a 3.747 on the

1 right side?

2 A. Yes.

3 Q. And your class rank was 28 out of 225 students?

4 A. That's what it says.

5 Q. Look at some of these courses you were taking in high
6 school.

7 It looks like you were taking an Honors English class in
8 the ninth grade?

9 A. Yes.

10 Q. And you were taking Honors Algebra?

11 A. Yes.

12 Q. And again, in 10th grade and 11th grade you also took
13 Honors English classes?

14 A. Yes.

15 Q. And you received A's in both semesters for those two
16 courses?

17 A. For 10th and 11th you're talking?

18 Q. Yes.

19 A. Yeah. For 10th was A's and 11th was A minuses.

20 Q. And then you also took Advanced Placement US History?

21 A. Yes.

22 Q. In the 11th grade?

23 A. Yes.

24 Q. And then it looks like you were taking Honors Chemistry
25 and Honors Physics as well; is that correct?

1 A. Yes.

2 Q. And then it looks like in 10th grade you were taking
3 Honors Trigonometry and Honors Biology?

4 A. Yes.

5 Q. And while you were getting all of these good grades, you
6 were also participating in extracurricular activities?

7 A. Sometimes. It depends on like the season.

8 Q. Look at Defendant's Exhibit 19 for me.

9 A. Okay.

10 Q. And you'll see these, this is a document captioned Alumni
11 History from St. Joseph's High School. And it's got your name
12 there, and 2008.

13 2008 was the year you graduated?

14 A. Yes.

15 Q. And then it looks like for your years -- why don't you
16 just tell us, what years were you a varsity swimmer at St.
17 Joseph's High School?

18 A. All four years.

19 Q. And what years did you play on the soccer team at high
20 school?

21 A. On -- does it matter which one?

22 Q. Doesn't matter.

23 A. All four.

24 Q. And were you a captain of swim team your senior year?

25 A. Yes.

1 Q. And it also looks like you played volleyball?

2 A. Freshman -- sorry, freshman and JV, so for two years.

3 Q. And then look if you would at Defendant's Exhibit 20,

4 which is a senior athletic awards --

5 A. Yes.

6 Q. -- document. And if you look at the page that says at the

7 bottom right-hand corner NBME 1033. It's a little harder to

8 read. I apologize.

9 A. Okay.

10 Q. Do you recall that you were -- you see your name under the

11 last award section for the Southwestern Michigan Athletic

12 Conference Academic Conference Members with a GPA of 3.5 or

13 better?

14 A. Yes.

15 Q. And then it looks like right above that, you also got a

16 senior athletic plaque award.

17 What did the plaque award symbolize or represent?

18 A. I'm not sure, to be honest.

19 Q. Look at DX-56 -- a little trickier -- which is your other

20 notebook.

21 A. Okay.

22 Q. While you're looking at that, DX-56 is an electronic

23 admission application that you submitted to the University of

24 Wisconsin in Madison, Wisconsin in 2008; is that correct?

25 A. This may have been a draft. I don't know if it's what was

1 actually submitted.

2 Q. Go, if you would, to the page which, if you're looking at
3 the top, is page 7.

4 And here's an additional listing of activities that you
5 participated in in high school. Do you see that? Section 8,
6 Activities?

7 A. Yeah. Yes.

8 Q. And so again, it's got soccer, swimming, captain, Coach's
9 Award, varsity four years. You were also a member of the
10 National Honor Society?

11 A. Yes.

12 Q. It looks like you were a volunteer at a Miracle Baseball
13 League?

14 A. Yes.

15 Q. You were in the Key Club.

16 What's the Key Club?

17 A. I don't really remember. I think it -- I didn't really go
18 to the meetings. So I think I went to a couple of them. And
19 then we volunteered I think a couple times as a group.

20 Q. And then you were in the Spanish Club, and you were also
21 the men's swim team manager. And it looks like you devoted
22 approximately 15 hours a week when you were doing that?

23 A. Yeah.

24 Q. And it looks like when you were playing soccer, that was
25 taking you 12 hours a week, and swimming was taking you about

1 20 hours per week?

2 A. Yeah. These were averages, but yeah.

3 Q. Okay. And then you also tutored at some point. It looks
4 like you spent two hours a week tutoring somebody, for two
5 years.

6 What were you tutoring, what subject?

7 A. I don't remember. But I know it was somebody else
8 younger, like in maybe fourth grade. It was probably math or
9 science.

10 Q. And then babysitting, you spent five hours a week
11 babysitting?

12 A. Approximately. But again, it's an average.

13 Q. If you go to the page that says page 10 at the top. It
14 was an essay you wrote where the school was trying to get a
15 better sense of you?

16 A. Yes.

17 Q. And is this an essay you sent to or prepared for the
18 University of Wisconsin?

19 A. Again, I don't know if it was the final, but yes.

20 Q. And in this essay, were you walking through a typical day
21 in your life?

22 A. Not a typical day, but it was a day that I thought showed
23 some of my skills.

24 Q. And then in this discussion, it has you getting up at 5:45
25 a.m., getting to morning swim practice at 6:00 a.m. 7:00 a.m.

1 into the showers. 8:00 a.m. school starts. Then you go to
2 Honors English, Honors Chemistry, eat lunch, on to AP History,
3 AP Calculus. End of the school day, school is over. Pack, get
4 ready, back into the pool. Another two-hour practice. Drive,
5 determination, get a ride, practice is over. Change. Change
6 into shin guards and socks, cleats, 20 minutes to soccer
7 practice. Soccer practice till 8:00 p.m. Drive 20 minutes
8 home. Then begin to work on your homework, research paper,
9 Spanish translation and exercises, pre-lab chemistry problems,
10 chapter review questions. Take a break for food, back to
11 homework. Continue with a 35-page history chapter and 15
12 extremely hard calculus problems. 2:00 a.m., done for the day.
13 Not quite done with homework.

14 Did you have days like that in high school?

15 A. Some, yes.

16 Q. And then in fact, on the next page, there's a
17 certification of accuracy saying the information that you had
18 provided in your application was accurate?

19 A. Okay.

20 Q. Correct?

21 A. Yes.

22 Q. Look, if you would, at DX-7.

23 A. 7?

24 Q. 7. These are I believe some interrogatory responses you
25 provided to us in discovery.

1 A. Okay.

2 Q. And we'll go through them all again, but does this also
3 include a discussion of your extracurricular activities?

4 A. What page?

5 Q. Page 14. And these look like extracurricular activities
6 after you graduated from high school. Do you see that?

7 MR. BERGER: I'm sorry, where are we in this document?

8 MR. BURGOYNE: The first one -- there's two spots.

9 The first one is on page 14, discussion of jobs and activities
10 that she performed after high school.

11 THE WITNESS: The one on 14, the date ranges are from
12 like present, so while I've been on leave. And I think it goes
13 backwards.

14 BY MR. BURGOYNE:

15 Q. Actually, the ones I really want to ask you about are
16 the -- turn to page 22, if you would.

17 A. Okay.

18 Q. And again these are just additional activities that you
19 participated in while you were in high school; is that correct?

20 A. Mostly in high school. Some of them were outside of high
21 school.

22 Q. One of the things that it looks like you did is you
23 participated in acting, paid and unpaid?

24 A. Yes.

25 Q. And it looks like you said about two to three hours per

1 week for a couple of weeks.

2 It also says you were a lifeguard for several years?

3 A. Yes.

4 Q. And did you do that both in the school year but mostly in
5 the summers?

6 A. A lot of these were mostly in the summers. And then if I
7 had time like over a winter break or something, would pick up a
8 shift.

9 Q. And you both -- you were responsible for the safety of the
10 people in the pool when you were the lifeguard?

11 A. Yes.

12 Q. And then you also taught lessons?

13 A. Yes. But not while I was lifeguarding.

14 Q. That was separate from --

15 A. Yeah. It might be there were two guards on duty if I had
16 lessons or maybe my shift that day was only lessons.

17 Q. And then it looks like you were also in an indie film at
18 some point in 11th grade?

19 A. As part of the acting. That was over the summer.

20 Q. You did some modeling and then also participated in dance
21 as a high school elective?

22 A. Yes.

23 Q. Then at this point on the strength of your grades and your
24 ACT score, which we'll discuss in a minute, you were admitted
25 to Ohio State University?

1 A. I'm sure they weighed a lot of parts of my application.
2 They didn't tell me what it was based off of, but I would
3 assume grades and extracurricular activities and essays and
4 letters of recommendation.

5 Q. And then you began attending Ohio State in the fall of
6 2008. Correct?

7 A. Yes.

8 Q. Let's look at Dr. Smiy's evaluation. He's the one who
9 diagnosed you with ADHD. Correct?

10 A. Yes.

11 Q. Let's look at -- it's DX-41 in the notebooks you have.

12 And this is the first time you've been diagnosed with a
13 disability that led to accommodations; is that correct?

14 A. Formal accommodations, yeah.

15 Q. And Exhibit 41, this is the record of your visit to Dr.
16 Smiy; is that correct?

17 A. I believe so.

18 Q. And you testified, I believe, that you went to see him
19 because you wanted to get documentation to support
20 accommodations at Ohio State University?

21 A. I believe. I believe so.

22 Q. And you also testified that you were having problems, as I
23 recall, that were identified by maybe an organic chemistry
24 teacher and a Spanish teacher?

25 A. Uh-huh.

1 Q. Why didn't they give you informal accommodations? Why did
2 you feel the need to get formal accommodations? Why didn't
3 they just give you extra time?

4 A. Because apparently they weren't allowed to because they
5 told me such, that they wish they could but they can't just do
6 that and it has to go through the university, so they
7 recommended going through the appropriate channels.

8 Q. And then you went to see Dr. Smiy, and he had -- he was
9 your primary care physician at this point and had been for
10 several years?

11 A. Yes.

12 Q. And if you look -- well, let's get the date on here for
13 our bearings.

14 This is March 24, 2009, and it reflects an office visit.

15 And next to it he has -- someone has typed in ADD/ADHD?

16 MR. BERGER: What page are you on?

17 MR. BURGOYNE: The first page.

18 THE WITNESS: Yes.

19 BY MR. BURGOYNE:

20 Q. Do you see that?

21 A. Yes.

22 Q. And then on page 2, there's a history of the present
23 illness.

24 At this time you spent -- all the time that you spent with
25 him was just spent talking with him; is that correct?

1 A. I'm sure he did a physical exam, but otherwise, yes.

2 Q. Okay. He didn't administer any diagnostic assessments?

3 A. He asked me questions, but I -- he didn't do testing like

4 Dr. Smith did.

5 Q. And he didn't have you fill out any symptom checklists or
6 anything like that?

7 A. Not that I remember. I just remember him asking
8 questions, which may have been part of a checklist.

9 Q. Then if you see under the history of present illness, and
10 it says, reasons for visit, see chief complaint. Chief
11 complaint, ADD/ADHD?

12 A. Are we on the same page?

13 Q. Page 2 at the bottom.

14 Do you see that?

15 A. Yes.

16 Q. There's a discussion right below that, high school, no
17 problems?

18 A. Yes.

19 Q. Do you see that? Is that information you provided to him
20 during your discussion?

21 A. Not that I remember.

22 Q. And then the next page, there's the statement: College
23 stress is making her switch letters around a bit, always a slow
24 reader, takes a lot of concentration for her to read, has to
25 reread a lot to get to the point. Not as good of a test taker,

1 better orally, names are a problem for her, procrastinates,
2 reading especially, multitasking okay.

3 Is that information you provided to him during your
4 evaluation?

5 A. I think that it is some of the information I provided and
6 that he interpreted and made notes of in his notes.

7 Q. Turn to the next page, if you would, please.

8 And at the bottom there's an assessment that he makes?

9 A. Okay.

10 Q. Do you see that he has comments, and it says: ADD versus
11 possible dyslexia. Patient has more focus issues than dyslexic
12 tendencies. Recommend a trial of Ritalin as prescribed.

13 At this point did he place you on Ritalin?

14 A. Yes.

15 Q. Was that the first time in your life you had been taking
16 Ritalin or any other type of medication to address any
17 attention-related issues?

18 A. Yes.

19 Q. You were never on Ritalin when you were in high school,
20 elementary school, any of those places?

21 A. No.

22 Q. And it looks like he gave you an ADD survey and
23 literature.

24 Do you recall him doing that?

25 A. I don't. I don't recall. I think he gave a pamphlet.

1 Q. And then it says: Face to face time with the patient, 30
2 minutes.

3 Is that consistent with your recollection of how long you
4 spent with Dr. Smiy?

5 A. Yeah, I think that's probably about what it was.

6 Q. Look to Exhibit 42 for me, if you would.

7 Is this a form that you had to get Dr. Smiy to complete in
8 support of your request for accommodations at Ohio State?

9 A. Yes.

10 Q. Did you complete the first part -- is that your
11 handwriting on the first part of page 2, the student
12 information?

13 A. Yeah. Yes.

14 Q. And then did you provide this form to Dr. Smiy's office to
15 complete the diagnostic information?

16 A. I believe that it was faxed to him from the office of
17 disability services.

18 Q. Here he does assign a formal diagnosis to you. He
19 diagnoses you with -- he says 314, predominantly inattentive.

20 Did you understand that to be predominantly inattentive
21 type of ADHD?

22 A. At this time I believe that's what he thought.

23 Q. And he didn't indicate there was an issue with
24 hyperactivity or impulsivity?

25 A. He didn't check those.

1 Q. Okay. And then in the next box he tells us how he arrived
2 at his diagnosis; is that correct?

3 A. That's what that category is, and then he checked.

4 Q. And what did he check under there?

5 A. Developmental history, medical history, structured or
6 unstructured, clinical interview with the student.

7 Q. Then on the next page, there is a statement, what is the
8 severity of the condition, and he checked moderate; is that
9 correct?

10 A. I'm sorry, you said the next page?

11 Q. Yes. It's page 3 at the bottom.

12 A. At the bottom?

13 Q. Yes. It says page 3 on the bottom of the page, and the
14 reference to the severity is at the top.

15 Do you see that?

16 A. Sorry. Yes.

17 Q. And he identified the severity of your condition as
18 moderate?

19 A. Yes.

20 Q. Then the next one in terms of your ADHD history, he states
21 no hyperactivity component known.

22 And then above that he states that his first contact with
23 you was in February of 2003 and his last contact with you was
24 July 2010.

25 So he had been your primary care physician at least as of

1 that point for about seven years?

2 A. At that point, yes, but I can't really read his
3 handwriting very well, so --

4 THE COURT: Counsel, before you go to another exhibit
5 or another page, we're going to take a brief break now. We'll
6 be in recess for 15 minutes. I have a conference call.

7 MR. BURGOYNE: Thank you, Your Honor.

8 (Recess at 3:00 p.m. until 3:16 p.m.)

9 THE COURT: All right. Let us proceed.

10 And again, I'll remind you you're still under oath
11 from previously being sworn earlier.

12 THE WITNESS: Yes, Your Honor.

13 THE COURT: Counsel, you may proceed.

14 BY MR. BURGOYNE:

15 Q. Jessica, we are still looking at your ADHD verification
16 form. And if you could look at page 4 of that document for me.

17 A. Okay.

18 Q. And do you see in the middle of the page, there's a
19 heading called educational history?

20 A. Yes.

21 Q. And it says: Provide a history of the use of any
22 educational accommodations and services related to this
23 disability?

24 A. Okay.

25 Q. And what did Dr. Smiy provide in response to that

1 question?

2 A. The first word is "none." And I don't know what --
3 something date, to date.

4 Q. It might say none known to date?

5 A. Yeah, none known to date.

6 Q. And then the bottom of the page, he identifies some ADHD
7 symptoms that in his view you were currently exhibiting.

8 And do you see he's marked some but not all of the
9 symptoms for inattention on the bottom of page 4?

10 A. Yes.

11 Q. And then on the bottom -- the top of page 5, for your
12 hyperactivity symptoms, he appears to have indicated NA, not
13 applicable, and the same for impulsivity; is that correct?

14 A. Yes.

15 Q. I believe you indicated, actually, they started approving
16 accommodations for you at Ohio State before you submitted the
17 verification form?

18 A. Yes. They had temporary accommodations.

19 Q. Those temporary accommodations were provided in the May
20 time period of your sophomore year?

21 A. I'm not sure exactly when those started.

22 Q. In any event, at some point during your sophomore year?

23 A. Yes.

24 Q. Look at DX-22, if you would, for me.

25 Is this your transcript from Ohio State University?

1 A. Yes.

2 Q. I think you testified that when you got to college, you
3 encountered a lot more reading?

4 A. Yes.

5 Q. So college was harder than high school was?

6 A. I think it depends on the class, because if it was like
7 dance, it wasn't really reading. But in general, the content
8 was harder, and the reading, there was more reading, but I
9 didn't necessarily get to the reading.

10 Q. And you indicated -- I think you testified you couldn't
11 handle it, you were drowning, you couldn't keep up once you got
12 to college.

13 Is that your testimony earlier?

14 A. Yes.

15 Q. Look at your transcript for the first quarter.

16 So Ohio State was on the quarter system?

17 A. Yes.

18 Q. So in the autumn 2008 quarter, it looks like you made
19 Dean's List?

20 A. Where does it say?

21 Q. Right above winter 2009 quarter to the left.

22 A. Yes.

23 Q. And it shows your cumulative GPA after your first quarter
24 was -- it looks like a 3.566?

25 A. Yes.

1 Q. Correct?

2 A. Yes.

3 Q. And you were not receiving any accommodations at that
4 time?

5 A. No.

6 Q. Likewise --

7 A. Not formal accommodations.

8 Q. I thought we established earlier you weren't getting
9 informal accommodations at Ohio State because they couldn't
10 just give them to you?

11 A. Again, it would depend on what it was, like whether they
12 were helping me explain something versus on testing, something
13 on grades or not.

14 Q. So they weren't giving you extra testing time in all
15 events, were they?

16 A. No.

17 Q. Then likewise for the winter quarter, you again made
18 Dean's List. And at that time you were not receiving any
19 extended testing time or any other accommodation along those
20 lines?

21 A. I did receive -- or I was on the Dean's List. That was
22 your first question. Right?

23 Q. Right.

24 A. And then I had, again, like I said, informal
25 accommodations but no extended time on testing, like formal

1 accommodations.

2 Q. And it looks like you've got all A's and B's up to through
3 the winter 2010 quarter. And your cumulative GPA at that point
4 was a 3.635; is that correct?

5 A. After the winter quarter?

6 Q. After your winter 2010 quarter.

7 A. Yes.

8 Q. And then it was -- it looks like in the spring quarter,
9 perhaps you got accommodations on your year-end exams. Is this
10 when you would have started getting accommodations, in the
11 spring?

12 A. I definitely had them by the spring. I don't know, like I
13 said, when the temporary kicked in.

14 Q. Then if you look at your grades afterwards, it looks like
15 they stayed A's and B's after you started receiving
16 accommodations with the exception of one C; is that correct?

17 A. Are we on the other page?

18 Q. Yes. Two pages over, I'm sorry.

19 A. Yes.

20 Q. Let's look a little bit at your standardized testing
21 history.

22 You've taken several standardized tests over the course of
23 your lifetime; is that correct?

24 A. Yes.

25 Q. And they began in kindergarten?

- 1 A. I think so.
- 2 Q. Look at Defendant's Exhibit 24.
- 3 A. Okay.
- 4 Q. And you see this is a Stanford Early School Achievement
5 test?
- 6 A. Yes.
- 7 Q. And it has your name on the right side?
- 8 A. Yes.
- 9 Q. And kindergarten, it appears the date of testing was April
10 1996 and you were at Sunset Oaks Academy at that time?
- 11 A. Yes.
- 12 Q. And what was your percentile rank for your total reading
13 score on that exam?
- 14 A. 96.
- 15 Q. And then word reading, you were in the 86th percentile?
- 16 A. Yes.
- 17 Q. And by 96th percentile, that means you were in the top
18 4 percent of the individuals who were taking that test for some
19 period of time?
- 20 A. I believe so.
- 21 Q. And you didn't receive any accommodations on this
22 standardized test, did you?
- 23 A. I don't remember taking this test, so...
- 24 Q. Fair enough. Exhibit 25, another standardized test. You
25 took this one in the first grade. And your total reading score

1 was what percentile?

2 A. 70.

3 Q. 70th percentile. And then Exhibit 26, another Stanford
4 Achievement Test. You're in the second grade. I believe you
5 indicated this was one of the grades when you were getting
6 informal accommodations?

7 A. Yes.

8 Q. And your total reading, you were in the 88th percentile in
9 the second grade?

10 A. Yes, yes.

11 Q. And your reading comprehension was at the 76th percentile?

12 A. Yes.

13 Q. Correct?

14 And again, at this point you were not receiving any formal
15 accommodations?

16 A. Correct.

17 Q. Let's look at Defendant's Exhibit 27, which is the Iowa
18 Test of Basic Skills and Cognitive Abilities Test.

19 A. Okay.

20 Q. Do you recall reviewing this document when you were
21 preparing your materials to submit to the NBME?

22 A. Not the first time, but I think it would have been after
23 the second.

24 Q. Perhaps in connection with one of the reconsideration
25 requests?

1 A. Are you talking about like before the third one?

2 Q. Yeah. At any point did you consider whether you should
3 submit this document to the NBME?

4 A. I think I asked if this was relevant but also I probably
5 did ask if it was something that I should submit.

6 Q. Who did you ask?

7 A. I don't recall specifically, but if it was something I
8 found before seeing Dr. Smith or in the time that I knew Dr.
9 Smith, then I probably sent it to him and asked if it was
10 relevant to documenting -- the documentation that should be
11 submitted.

12 Q. And eventually, this document was never provided to NBME,
13 was it?

14 A. It was provided during the discovery.

15 Q. Discovery, but not in support of any of your accommodation
16 requests?

17 A. No.

18 Q. Okay. And this is from -- what grade were you in here?

19 This is the sixth grade, it looks like. The sixth grade.

20 Do you see that in the upper right-hand corner?

21 A. I believe so, yeah.

22 Q. And do you see that the basic skills that you were
23 evaluated for at that time included vocabulary, reading
24 comprehension and then a reading total? Do you see that on the
25 left side?

1 A. Yes.

2 Q. And do you see on the top of obtained scores there's a
3 heading that says NPR, national percentile rank? Do you see
4 that?

5 A. Yeah, yes.

6 Q. And what was your national percentile rank for your
7 vocabulary?

8 A. 83.

9 Q. All right. And how about your reading comprehension?

10 A. 66.

11 Q. And then your reading total was what?

12 A. 74.

13 Q. And then if you go down, there's a composite score
14 reflecting your performance on all of the subtests and
15 components of this exam.

16 What was your composite national percentile score?

17 A. In the same table?

18 Q. Yes. It's right above math computation.

19 A. 86.

20 Q. And you did not receive any formal accommodations on this
21 test?

22 A. Not that I remember.

23 Q. Look at Exhibit 28, which is a document provided by St.
24 Joseph's High School reflecting your test results while you
25 were in high school?

- 1 A. Okay.
- 2 Q. You see there's a reference on the left side to the PLAN
- 3 test.
- 4 A. Yes.
- 5 Q. Is that a standardized ACT exam?
- 6 A. I think it's a practice ACT exam that's probably
- 7 standardized.
- 8 Q. And then we'll look at these in a minute but right below
- 9 that are your ACT scores.
- 10 You took the ACT exam twice?
- 11 A. Yes.
- 12 Q. And then there's also a reference here to the PSAT/NMSQT.
- 13 What is the PSAT exam?
- 14 A. I'm not sure. I don't remember taking it.
- 15 Q. And the PSAT exam, also a standardized test, reflects
- 16 critical reading as one of its evaluated components. And I
- 17 know it's a little small, but what was your percentile
- 18 performance in critical reading on the PSAT exam in the 10th
- 19 grade?
- 20 A. Is that the first or second? You said 10th grade?
- 21 Q. 10th grade, yes.
- 22 A. For critical reading? 71.
- 23 Q. And then for critical reading in the 11th grade, what was
- 24 your percentile rank?
- 25 A. 70.

1 Q. And you were in the 95th percentile in your math
2 performance in that one?

3 A. In the second one?

4 Q. Yes.

5 A. Yes.

6 Q. Is that correct?

7 A. Yes.

8 Q. Look at DX-29.

9 And this is your actual PLAN score report from ACT --

10 A. Yes.

11 Q. -- reflecting a test date of November 2, 2005?

12 A. Yes.

13 Q. Do you see that?

14 A. Yes.

15 Q. Then what was your composite score on the ACT PLAN test
16 percentile?

17 A. 20 -- oh, percentile. 97. No, wait. Is it on the left
18 column?

19 Q. Yes.

20 A. Yeah, 97.

21 Q. So for this PLAN, you were in the top 3 percentile of
22 everybody who took the PLAN in the United States?

23 A. I believe so.

24 Q. Okay. English, you were in the 98th percentile, so the
25 top 2 percent?

- 1 A. I believe so.
- 2 Q. Reading, you were in the top 73 percent? I'm sorry, you
3 were in the 73rd percentile, the top 27 percent of all
4 examinees?
- 5 A. Yes.
- 6 Q. And then there's -- there's a column that indicates your
7 college readiness in the middle of the page.
- 8 What does it indicate your college readiness was for
9 English and reading?
- 10 A. 15 and 19 -- or, sorry, 15 and 17.
- 11 Q. So you were above in both categories?
- 12 A. Yes.
- 13 Q. Of where you would be in college, individuals going to
14 college?
- 15 A. Yes, it says above.
- 16 Q. Please look at Exhibit 30.
- 17 You did not get extended testing time on the ACT PLAN
18 test?
- 19 A. I'm sorry, on the PLAN?
- 20 Q. Yes.
- 21 A. I don't believe so.
- 22 Q. And you didn't take that on a computer with Kurzweil
23 software or anything like that?
- 24 A. I don't know if it was taken on a computer. I think it
25 was a test booklet.

1 Q. And on Exhibit 30 is your ACT test?

2 A. Yes.

3 Q. And this is the first time you took the test, which -- I
4 think you took it when you were a junior in high school, March
5 2007.

6 And what percentile were you in for your composite score
7 when you took the ACT exam?

8 A. You said percentile?

9 Q. Yes.

10 A. 89th.

11 Q. Well, 89 in your state.

12 What about in the United States?

13 A. Oh, sorry. 90.

14 Q. So you're in the top 10th percentile in the United States.
15 Do you know how many students take the ACT exam each year?

16 A. No.

17 Q. Would it surprise you if it was over a million?

18 A. Probably not.

19 Q. And then there's also a reading score.

20 And what was your percentile rank in reading?

21 A. 87.

22 Q. And you took the ACT test without extended time, without a
23 private room and without any other accommodations?

24 A. Yes.

25 Q. And you took that in a test room with other students?

1 A. Yes.

2 Q. Exhibit 31. Is this your ACT score report for when you
3 took the ACT exam in October 2007?

4 A. Yes.

5 Q. And it looks like you'd improved your score here.

6 What was your percentile performance for examinees in the
7 United States on this exam?

8 A. 97th.

9 Q. And what percentile were you in nationally for reading?

10 A. 91st.

11 Q. So you were in the top 9 percent of all individuals on the
12 ACT exam that year across the country?

13 A. It would appear so.

14 Q. Look at the next page. It's Defendant's Exhibit 32.

15 When you were asked about the MCAT earlier today?

16 A. Yes.

17 Q. And so this is your actual score report from the MCAT?

18 A. Yes.

19 Q. And it shows you took this exam in April 2011. And for
20 your composite score, what percentile were you on this exam?

21 A. 79th.

22 Q. And do you see that at the bottom there's a footnote that
23 discusses what that percentile rank is reflecting? And do you
24 see the last sentence, it says: The percentile ranks are based
25 on tests administered from January 2012 through September 2014

1 Do you know how many individuals take the MCAT each year?

2 A. No. But I took it in 2011. Right? Or MCAT? Okay, no.

3 I'm sorry. That was the ACT.

4 Q. So it also breaks down your individual test scores,
5 physical sciences, you were in the 79th percentile, and that
6 was one of the parts of the test that you annotated; is that
7 correct?

8 A. Sorry, can we back up? I think I just said that it was
9 for the ACT.

10 2011 is when I took the MCAT.

11 Q. Correct.

12 A. Yes. And this said -- these percentile ranks are for 2012
13 through 2014.

14 Q. That's what it says, yes.

15 A. Okay. And then what was your next question, I'm sorry?

16 Q. So physical sciences, you were in the 79th percentile?

17 A. Yes.

18 Q. Verbal reasoning, you were in the 67th percentile. And
19 then biological sciences, you were in the 88th percentile?

20 A. Yes.

21 Q. And the MCAT was a computer-based examination when you
22 took it?

23 A. It was when I took it.

24 Q. And it's all multiple choice. There's also a writing
25 component?

- 1 A. Correct.
- 2 Q. But the three sections we just looked at, physical
3 sciences, verbal reasoning and biological sciences, those are
4 all multiple choice questions?
- 5 A. Along with passages, yes.
- 6 Q. And it's an exam that lasts, total time, somewhere around
7 four to five hours total exam time?
- 8 A. I don't remember exactly, but that sounds about right.
- 9 Q. And you didn't receive extended testing time on the MCAT?
- 10 A. No.
- 11 Q. You didn't use any screen reading software?
- 12 A. I didn't know it was available at that time.
- 13 Q. You didn't read aloud when you took the exam?
- 14 A. I wasn't allowed to, but I mouthed it or read with my
15 mouth without making any noise.
- 16 Q. And you didn't test in a separate testing room?
- 17 A. No.
- 18 Q. Exhibit 33, just to round out your standardized testing,
19 this is your Step 1 score report?
- 20 A. Yes.
- 21 Q. And you failed the exam by 1 point?
- 22 A. Yes.
- 23 Q. And then on the second page, there's a performance
24 profile.
- 25 Do you see that?

1 A. Yes.

2 Q. And the middle of the exam is sort of borderline
3 performance?

4 A. Yes.

5 Q. And then the stars on the right side indicate you
6 performed higher in those subjects?

7 A. Yes.

8 Q. And on the left it looks like it indicates you had lower
9 performance on those subjects?

10 A. Yes.

11 Q. And you had performance, depending on the subject, that
12 was on both sides of borderline performance, some lower and
13 some higher?

14 A. Yes. Mostly lower.

15 Q. Look, if you would, please, at -- look at DX-2, paragraphs
16 20 and 21.

17 And this is the declaration that you submitted in support
18 of your preliminary injunction.

19 A. Sorry, what page?

20 Q. Go to DX-2.

21 A. Yes.

22 Q. And then go to -- it's page 6.

23 Do you see in paragraph 20 you describe the ACT exam?

24 A. Yes.

25 Q. And you state: For the ACT, the intrinsic nature of the

1 test made it possible to answer many of the questions without
2 reading the question prompt, which allowed me to get through
3 enough of the questions to score well enough to get into
4 college, though my score did not adequately reflect my
5 knowledge or reasoning ability.

6 On the last ACT you took, you were in the 97th percentile.

7 So is it your testimony you should have been in a higher
8 percentile than that?

9 A. It's my testimony that I didn't get to read all of the
10 questions, so I didn't get to show all of my knowledge on all
11 of the questions.

12 Q. Okay. You go on to state: Most of the questions required
13 little reading in order to find the answers, and therefore, I
14 was able to answer enough questions to achieve an acceptable
15 score -- top 3 percent -- even though I was not able to read
16 all of the questions. And due to the guessing penalty that is
17 applied in scoring the ACT, I had to leave some questions
18 unanswered.

19 What do you mean there by the guessing penalty?

20 A. On the ACT, if you are wrong, like if you fill in an
21 answer and you are wrong, you have -- there's a negative point
22 value that's associated with that, so it actually takes away
23 points from your score.

24 Q. Then in paragraph 22, you state: For the MCAT, as for the
25 ACT, many of the questions could be answered without reading

1 and gathering information from the passages.

2 Is that an accurate statement?

3 A. Yes.

4 Q. Look at DX-1, Tab A, which is your personal statement.

5 And again, you're discussing the ACT and the MCAT here, do
6 you see that, in the second full paragraph, page 3?

7 A. I see where I write ACT and MCAT a bunch.

8 Q. And in that first sentence, it says: I was able to avoid
9 reading strategically for some prior standardized tests like
10 the MCAT and the -- the ACT and MCAT because the tests were
11 designed so that many of the questions could be answered
12 without reading the whole question.

13 What was the basis for your statement that the ACT and
14 MCAT were designed so that people could answer the questions
15 without reading the whole passage?

16 A. A couple things. When I had taken the prep courses or --
17 like for the ACT, the school provided a prep course. They let
18 us know that a lot of the questions could be answered without
19 reading the passages that were associated. And so they advised
20 doing that. And since that's how I normally take tests anyway,
21 that seemed to fit.

22 And when we took the practice exams that they gave us, it
23 seemed to be like they were right.

24 And so when I took it, it was the same thing.

25 Q. But does that go to how the questions were designed?

1 A. I'm sorry, what?

2 Q. I'm wondering where you got the basis for your statement
3 that the questions were designed so they could be answered that
4 way?

5 A. That's what the -- they had told us, and that's what the
6 booklet said.

7 Q. The test booklet?

8 A. Yeah.

9 Q. Then you go on to say: Additionally, due to the guessing
10 penalty, I had to leave the questions I was not able to read
11 unanswered.

12 And that's referring to the ACT exam?

13 A. Yes.

14 Q. Look at DX-60 for me, please.

15 A. Okay.

16 Q. DX-60 is a document captioned -- titled the ACT, preparing
17 for the ACT 2007-2008.

18 And do you recall seeing this document or a document like
19 this when you were preparing for taking the ACT exam?

20 A. Yeah. They probably gave this in their prep course.

21 Q. Okay. And what year did you take the ACT exam?

22 A. 2007.

23 Q. And then this book includes complete practice tests. But
24 turn to page 3, if you would, for me where there's a discussion
25 of general test-taking strategies for the ACT.

1 A. Okay.

2 Q. And do you see on the top right-hand side, where the
3 advice given is to read each question carefully?

4 A. Okay.

5 Q. And then there's the next statement, answer the easy
6 questions first.

7 Is that similar to what you testified you did when -- as a
8 test-taking strategy?

9 A. I don't know if I would say easy, but answerable, but...

10 Q. It goes on to say: Answer every question. There is no
11 penalty for guessing.

12 So when you said in your various papers that you left
13 answers unanswered on the ACT test because there was a guessing
14 penalty, that was simply -- that was just a mistake?

15 A. As far as I remember, to my best recollection, there was a
16 guess penalty and we were told not to guess.

17 Q. Go to page 8, if you would, please. And there's a
18 description of the reading test, which is one of the components
19 of the ACT exam.

20 A. You said 8?

21 Q. Page 8, yes.

22 A. Okay.

23 Q. There's a statement: The ACT reading test is a
24 40-question, 35-minute test that measures your reading
25 comprehension.

1 A. Okay.

2 Q. So you've got less than a minute to answer each of the
3 questions?

4 A. Okay.

5 Q. And then over on the right, it states, first full
6 sentence: The test compromises four prose passages that are
7 representative of the level and kinds of texts commonly
8 encountered in first year college curricula?

9 A. Okay.

10 Q. And then you go on down, and there are tips for taking the
11 ACT reading test.

12 And read the second heading for me, please?

13 A. The second one underneath?

14 Q. Yes.

15 A. Read the passage carefully.

16 Q. Correct. And right below that it says: Before you begin
17 answering a question, read the entire passage thoroughly. It
18 is important that you read every sentence rather than skim the
19 text.

20 A. Okay.

21 Q. Do you recall receiving that advice before you took the
22 ACT exam?

23 A. Not receiving that advice.

24 Q. And then under the ACT science test, under the next page,
25 9, do you see again the advice provided is to read the passage

1 carefully and that it is important to read the entire text and
2 examine any graphs, tables or figures? Do you see that on the
3 bottom left-hand side?

4 A. Not specifically.

5 Q. It's the first two sentences under the heading read the
6 passage carefully.

7 A. Okay.

8 Q. So now let's actually look at what the reading test was.

9 And again, this is a test where you scored in the
10 90-something percentile?

11 A. Okay.

12 Q. First passage: This is an exam which has passages
13 followed by several questions.

14 A. What page are you on?

15 Q. Page 34. And this first one is -- involves prose fiction,
16 the first passage.

17 A. Okay.

18 Q. Now, I understood you to say the first thing you would do
19 is read the last sentence in the passage?

20 A. Not the passage, the question. So like if --

21 Q. Let's go to the next page then.

22 So we've got ten questions tied to that passage.

23 A. All right.

24 Q. Tell me what you would do here. What's the first thing
25 you would read on this page?

1 A. Well, I would start with the first question and read the
2 last line of that question, which in this case there's only
3 one. And then -- you want me to keep going?

4 Q. So the first question, the main theme of this passage
5 concerns the -- right?

6 A. Okay.

7 Q. So you'd read that.

8 And is that a question you could answer without reading
9 the passage?

10 A. Not that one, so I would move on to the next one.

11 Q. All right. Which of the following questions is not
12 answered by information in the passage.

13 Is that a question you could answer without reading the
14 passage?

15 A. Nope. So I would move on to the next question.

16 Q. The narrator draws which of the following comparisons
17 between the old couple and Eugene's parents.

18 Is that one you could answer without going through the
19 passage?

20 A. Probably not, but I probably wouldn't have to read the
21 whole passage.

22 Q. The next one, in terms of developing the narrative, the
23 last two paragraphs, line 67 and 87, primarily serve to -- so
24 that's one you could go to and just read that amount of text?

25 A. That's what I would do, yes.

1 Q. Question 5, it can most reasonably be inferred from the
2 passage that when the narrative says X, she is most nearly
3 indicating that, and then it goes on.

4 Is that one you could read or answer without reading the
5 passage?

6 A. Number 5?

7 Q. Yes.

8 A. That has lines that it shows -- lines 30 and 31, so I
9 would read those.

10 Q. If you go on -- let me ask you something. The length of
11 the passage here in the reading test, is this longer than the
12 questions you encountered on Step 1?

13 MS. VARGAS: I'm going to object. I'm not sure what
14 the relevance of this is, because this isn't a test she ever
15 took. This is a sample question you've selected, so --

16 MR. BURGOYNE: Well, yeah. But we went through the
17 same exercise with the MCAT.

18 MS. VARGAS: She actually took the MCAT.

19 MR. BURGOYNE: She didn't take that MCAT. That was a
20 publicly disclosed MCAT exam from 2010.

21 MS. VARGAS: That took some of the same questions that
22 were on her exam. This is a practice book that you've selected
23 out of --

24 MR. BURGOYNE: I've selected it, Judge, just because
25 it was the practice book for her year and it has the practice

1 ACT test on it and it illustrates the type of questions she
2 encountered.

3 THE COURT: If you want me to rule on it or if you
4 want to continue your discussion without me, I'll allow you to
5 continue the discussion. But if there's an objection before
6 the Court, I'll rule on it.

7 Overruled.

8 All right. Let's move on.

9 MR. BURGOYNE: Thank you, Your Honor.

10 BY MR. BURGOYNE:

11 Q. So my question to you, Ms. Ramsay, was, is the passage
12 that's reflected here on page 34, one-page passage, is this
13 content longer than the content that you encountered in a
14 typical Step 1 question?

15 A. Since this is associated with ten questions, I'm not sure
16 how much of the reading is for which question, but the passage
17 itself is probably longer than the typical Step 1 question.

18 Q. And there are passages throughout the reading section of
19 the test, is that correct, on the ACT exam?

20 A. Yes.

21 Q. In fact, if you go to the English test that is on page 14,
22 it also includes passages; is that correct?

23 A. That looks like it does.

24 Q. And that looks like the math test was a 60-minute test
25 with 60 questions, some of which are problems and others of

1 which contained text.

2 If you look at page 26 of the exam, do you recall having
3 to read text when answering some of the math questions on the
4 ACT exam?

5 A. I don't recall specifically. I am sure there were some
6 where I had to read some text, but most of them were like
7 solving the math problems.

8 Q. And then the science part of this test, page 42, that also
9 included passages that you had to read and then answer a series
10 of questions; is that correct?

11 A. Yes, yes. Sorry.

12 Q. Let's look -- while we're here, let's look at the Step 1
13 sample questions, which is DX-61. You looked at a version of
14 the same document when Ms. Vargas was asking you some
15 questions.

16 A. Okay.

17 Q. Did you practice with these sample test questions?

18 A. These specific ones?

19 Q. Or something like this from the NBME website?

20 A. I did a lot of practice. I'm sure I did a similar -- the
21 sample questions that were out at the time that I did them, and
22 I'm sure I did a lot of other question banks.

23 MR. BERGER: I just want to note for the record, this
24 is not exactly the same. I certainly haven't compared it
25 question by question. But this one appears to say that it was

1 updated in February 2017, and I believe that the one that we
2 marked and was referred to earlier was updated in February
3 2019.

4 BY MR. BURGOYNE:

5 Q. In all events, you've seen a version of these practice
6 questions?

7 A. Yes.

8 Q. And you practiced with a version of these practice
9 questions?

10 A. I did some of them as part of my practice, yes.

11 Q. And when you take the Step 1 exam, each question is a
12 distinct question, in other words, there's not a passage
13 followed by a series of questions?

14 A. Generally that is the case. There are paired questions
15 sometimes, which isn't like a passage and then multiple
16 questions. It's like a question like I described earlier for
17 Step 1 where you have to read all of it and figure out the
18 answer and you can't see the second question until you answer
19 the first. And so it's like a gatekeeper, because if you see
20 the second question, that gives away something to help you
21 answer the first, so like that's why they don't let you see it.

22 Q. Let's just look at a sample questionnaire. Just to turn
23 to page 8. And you see question 3?

24 A. Yes.

25 Q. It's a three-sentence question with a photograph?

1 A. Yes.

2 Q. Is that a common type of question that you encounter on
3 the Step 1 exam, a photograph, then a description, and then a
4 series of questions or a question tied to that photograph?

5 A. It is one of the types.

6 Q. And are these questions generally representative of the
7 questions you saw on the Step 1 exam?

8 A. I can't really say without looking at all of them, but I
9 know that they can't be completely representative because the
10 Step 1 questions sometimes have videos or sound clips
11 associated with them along with the question. And it's not
12 just like identify this murmur. It's a clinical question
13 similar to, you know, like one of these on the page probably,
14 along with the clip. And you have to spend the time listening
15 to or watching the clip and then reading the question and
16 answering the question.

17 Q. And in fact, to page 3, it points out that those
18 audio-type questions are not represented here?

19 A. Page 3. Okay.

20 Q. See the note at page 3.

21 Let's look at some of the MCAT questions that you
22 discussed earlier. And we can work right off the ones that you
23 indicated.

24 A. Okay.

25 Q. First of all, when did you do these annotations?

1 A. Within the last couple days.

2 Q. And make sure I understand exactly what you did here.

3 It looks like the physical sciences section.

4 Is this the entire section for physical sciences that
5 you've annotated?

6 A. I believe so.

7 Q. And then you've got highlighting here.

8 What is this highlighting supposed to indicate? For
9 example, the blue highlighting on page 5.

10 A. That's where I would have looked at, read.

11 Q. And when you took the actual MCAT, were you able to
12 highlight on the screen?

13 A. I don't remember, but possibly.

14 Q. And then when you do a different color highlighting here,
15 the green, what is that supposed to tell us?

16 A. That's probably showing for your benefit like the color
17 that associates with the question to show you where I read for
18 that question.

19 Q. Again, that's not anything you were actually doing when
20 you took the MCAT?

21 A. No. I was demonstrating to show you where I was reading.

22 Q. And then all these comments here, these comments,
23 completely passage independent, can answer based on prior
24 knowledge, essentially passage independent, could/would answer
25 solely based on the tiny bit I would have read to answer number

1 1.

2 Those are just comments you provided throughout this
3 document?

4 A. Yes, so you could see how I would go through that document
5 and take it.

6 Q. Then where there's information crossed out, what does that
7 indicate when you've crossed out an answer?

8 A. As an interruption, that's my thought process of ruling
9 out an answer.

10 Q. So in all these questions, I take it you would have read
11 at least the answer choices?

12 A. Yes. If I got that far. I did it as if I would have
13 gotten that far. And I think I commented about that in there.

14 Q. Some of these are kind of -- let's look at the verbal
15 reasoning next, Exhibit 19A.

16 And again, you went through the same exercise here. I'm
17 looking at page 34. And there's ten sets of comments sort of
18 explaining to me or the Court how you would have gone about
19 answering this question?

20 A. Yeah. So for the verbal section, I did it slightly
21 different than the physical sciences because I couldn't just
22 say here's a formula and that's the formula I used. So I had
23 to pretty much take it like I would take it, except for that I
24 didn't limit the time because then I wouldn't be able to
25 annotate. And then because of that, I went through the tests

1 as if I had gotten to all of that. But I just showed you what
2 I would have done had I been in that testing scenario.

3 Q. You even got to the point where you would go through and
4 count the total number of words in the passage and then
5 estimate how many passages you actually would have read when
6 you were taking the exam?

7 A. That's incorrect. I copy-and-pasted the passage into a
8 Word document and used word count to find the number of words.

9 And then if I read a part of it or a couple words or
10 whatever, I would highlight that and get the word count of
11 that. But that was after I had already gone through. I did
12 that after I had gone through the document.

13 Q. And this work was all your independent work, nobody helped
14 you?

15 A. Correct.

16 Q. And how long did it take you to do that?

17 A. Days. And I didn't finish. I haven't gotten to the
18 biological sciences. And I didn't do the writing sample.

19 Q. Let's look at Exhibit 58, please. And it's still relating
20 to the MCAT exam.

21 And this says Second Edition, The Official Guide to the
22 MCAT Exam?

23 A. Okay.

24 Q. And have you seen this document before?

25 A. I'm not sure.

1 Q. Or a version of the official guide for the MCAT?

2 A. I'm sure I've seen a version.

3 Q. I thought you had told me that you owned a copy of this or
4 a similar version at one point?

5 A. Yes. I think -- if this is the one that I thought had the
6 practice questions in it, that's what I thought it was, when we
7 were in deposition.

8 Q. And I'll tell you, it does include -- this is not -- this
9 is excerpts from the book.

10 A. Okay.

11 Q. And the book does include practice questions.

12 A. Then yeah, then I probably own...

13 Q. And you'll see on page 2, it has got a 2011 copyright, and
14 that was the year that you took the MCAT?

15 A. Okay. Yes.

16 Q. Look at page 13. And there's a discussion of the role of
17 the exam, and it indicates the MCAT exam is taken by more than
18 70,000 students each year.

19 A. Okay.

20 Q. Do you recall I had asked you the number, and you weren't
21 sure about that?

22 A. Yes.

23 Q. And then there's a breakdown. If you look at page 15,
24 there's a little summary of the exam.

25 A. Okay.

- 1 Q. Do you see that?
- 2 And it's just a good shorthand here?
- 3 So in the physical science areas, there's seven passages
- 4 and 52 questions.
- 5 A. Okay.
- 6 Q. And then verbal reasoning, again, seven passages, 40
- 7 questions. Biological science, 70 -- or seven passages and 52
- 8 questions.
- 9 So in all three of the multiple choice sections, there are
- 10 passage-based questions; is that correct?
- 11 A. Yes. Except for the writing sample.
- 12 Q. I think you indicated that at least one of the reasons you
- 13 didn't request accommodations on the MCAT was because you
- 14 didn't know they were available?
- 15 A. Yeah. I didn't find out they were available or even that
- 16 they existed until shortly before I took the MCAT.
- 17 Q. And I assume at some point when you were registering for
- 18 the MCAT, you went to their website?
- 19 A. Probably, yeah.
- 20 Q. You didn't see the references there for taking
- 21 accommodated tests?
- 22 A. No. I don't remember seeing them.
- 23 Q. Look at page 24, which is headed What is Accommodated
- 24 Testing and Who Needs to Apply.
- 25 Do you recall reading this section in which AAMC discusses

1 the availability of accommodations on the exam?

2 A. I don't recall specifically reading it. I probably -- I
3 may have seen it. I probably paged through the beginning of
4 this book, but I don't know if I saw this specifically.

5 Q. Let's look at your request for accommodations on Step 1.

6 Turn to DX-4, Tab A.

7 A. Okay.

8 Q. And this should be your first request for accommodations,
9 which I think you testified to or about this morning.

10 A. Okay.

11 Q. Turn to page 4, if you would, please.

12 And you see there's a section here that asks for
13 information about your impairment?

14 A. Yes.

15 Q. And section D1X asks you to check the box that best
16 describes the nature of your impairment and list the year it
17 was first diagnosed by a qualified professional.

18 All right? And what's the first box you checked?

19 A. Reading.

20 Q. Is that under the learning impairment category?

21 A. Yes.

22 Q. And did Dr. Tanguay, the optometrist, diagnose you with a
23 learning disability?

24 A. Not a learning disability, but at the time that I filled
25 this out and submitted it, I didn't know that she was not able

1 to diagnose a learning disability with the DSM criteria, but
2 she did diagnose that I had problems with reading.

3 Q. Were the problems she diagnosed you with, were they vision
4 related as opposed to a cognitive issue? I mean, she's an
5 optometrist?

6 A. She's an optometrist, so I don't know if she could say.
7 She said to the best of her ability that I had issues with the
8 flipping and I think she said like visual perception, which
9 perception implies how you perceive that information.

10 Q. Then the next thing, you also reference dyslexia here.
11 And you refer to a provisional diagnosis by Dr. Smiy?

12 A. Yes.

13 Q. And we already looked at his documentation.

14 You also reference here as another impairment migraines.
15 Right? Here at the bottom?

16 A. Yes.

17 Q. And you said you were diagnosed with those in 1997. And
18 the next one asks you to list the current diagnoses for which
19 you're requesting accommodations. And here you listed only
20 ADHD and dyslexia and did not include the migraines you
21 referenced above?

22 A. Yes. And as I said before, I didn't know that I could
23 request accommodations for migraines or at that time DVT
24 either.

25 Q. Look at the next page for me.

1 A. Okay.

2 Q. And do you see there's a reference to the accommodations
3 that you have received previously in post-secondary education.
4 And you state, you identified for NBME the accommodations you
5 received at Ohio State University.

6 Do you see that?

7 A. Yes.

8 Q. And one of the things you indicate is that you received
9 double testing time from Ohio State.

10 That isn't accurate, is it?

11 A. That is inaccurate, like not accurate. That was probably
12 a mistake on my part.

13 Q. You were getting time-and-a-half at Ohio State?

14 A. Yeah.

15 Q. Over on the right you said you were receiving
16 accommodations from Ohio State from 2009 to 2013. That was
17 also inaccurate, wasn't it?

18 A. I'm not sure, because I don't know when the temporary
19 kicked in.

20 Q. I think --

21 A. That probably was more 2010, but I don't know. It could
22 have been the end of 2009.

23 Q. Turn to the next page for me. There is a discussion of
24 accommodations you received in primary and secondary school.

25 Do you see that?

1 A. Okay.

2 Q. It asks you to provide each school and all formal
3 accommodations that you received and when you received them.

4 Do you see that heading?

5 A. Yes.

6 Q. You indicate in high school, none. Middle school, none.
7 And then in elementary school, you referred to the alphabet
8 chart again that we discussed earlier, and the distraction
9 reduced space, which we discussed earlier, extra time for
10 writing and reading. These were provided by the teacher, not
11 the school, so I do not have records confirming them. And you
12 refer to a single year in which you receive those
13 accommodations; is that right?

14 A. I think I was trying to provide the dates that I remember
15 it starting, but --

16 Q. It states dates provided?

17 A. Yeah. I probably misread it or wasn't paying attention.

18 Q. And although they asked for formal accommodations, you
19 chose to provide informal accommodations as part of your
20 answer?

21 A. Yeah, probably for the same reasons.

22 Q. And those were the accommodations that you received in
23 Sunset Oaks Academy, second or first grade?

24 A. Yeah. And carried on through some of them.

25 Q. And no reference to similar informal accommodations in

1 high school or middle school that you reported to NBME on your
2 first application?

3 A. On this form, but I did discuss some of them in my
4 personal statement. But I also didn't know that I needed to
5 list, like, every type of thing that my teachers would do to
6 help me. I thought that was kind of overkill and unnecessary,
7 so I left a lot of that stuff out on this form at the time that
8 I first applied.

9 Q. Okay. I think you already testified to your test-taking
10 strategies, the Step 1 exam?

11 A. Okay, yes.

12 Q. Do you recall that?

13 At some point did you -- let me make sure I understand
14 this.

15 The test-taking strategies that you report that you used
16 on the MCAT or the Step 1 exam, did you say those were
17 strategies that were also recommended by a test prep program
18 that you took?

19 A. So I use -- I can't use the exact same testing strategy
20 that I used for the MCAT on Step 1 because I have to -- we have
21 to read the entire question for Step 1 questions to get the
22 information needed to answer the question, whereas that wasn't
23 true for most of the questions for the MCAT.

24 And I have developed that strategy of reading as little as
25 possible because I couldn't read everything on most tests, like

1 early on. I don't even know if I could say when I first
2 started doing that. But that's typically something that test
3 prep people recommend. And so it was -- it confirmed what I
4 did, or validated it.

5 Q. Okay. Let's shift gears now to your testing experience
6 when you took the Step 1 exam in July of 2017.

7 Look at DX-1, which is the Complaint, and page 9.

8 And do you see paragraph 40 there? I'm sorry.

9 A. Yes.

10 Q. In paragraph 40, the middle sentence begins with "because
11 of her dyslexia."

12 Do you see that?

13 A. Okay.

14 Q. Because of her dyslexia and ADHD, Ramsay was only able to
15 read about 60 to 70 percent of the questions in each block and
16 had to enter guesses for the remaining questions without
17 reading them.

18 Is that an accurate statement?

19 A. Yes.

20 Q. And for every question on Step 1, did you spend at least
21 some time reading the question, including the passage?

22 A. I -- can you clarify passage?

23 Q. Well, the vignette, the lead-in, the stem to the question?

24 A. I think I -- I don't know if I can say every question, but
25 I know that I tried to read the last line of the vignette and

1 possibly the answer choices for the questions if I could get
2 there. But I don't know if I could say I did -- was able to
3 successfully do that for all of the questions for all of the
4 sections.

5 Q. Let me make sure I understand. For the 30 to 40 percent
6 of the questions that you say you didn't have time to read, is
7 it your testimony that you didn't read any of the question for
8 30 to 40 percent of the exam?

9 A. I probably was able to look at and at least start the last
10 line. I may not have read the whole last line or I may not
11 have read anything else.

12 Q. In your Complaint you said without reading them?

13 A. Without fully reading them, reading the whole question.

14 Q. Look at DX-2, paragraph 28.

15 A. Okay.

16 Q. And this is your declaration in this case?

17 A. Is it? I think so.

18 Q. And have you located paragraph 28?

19 A. Yes.

20 Q. And in this paragraph, you state in the middle of the
21 paragraph: I did not have time to read all of the questions
22 and in the last minute of each block was forced to blindly
23 select answer choices for about 30 to 35 percent of the
24 questions.

25 So is it your testimony that for 30 to 35 percent of the

1 questions, you simply chose an answer without reading any of
2 the passage?

3 A. Like I said before, I may have started or possibly read
4 the last line of the passage if I got to it, but I may not have
5 read -- been able to read the question, the whole question to
6 answer the question, the whole vignette to answer the question.

7 Q. Let me ask you to look on -- just to make sure we're
8 understanding each other here, is it now your testimony that
9 you might have read some of the content and all of the
10 questions, some of the questions?

11 A. So I -- okay. I read the last line or started reading the
12 last line if I could, if I got to that many. I may not have
13 read it for all -- I may not have read the whole line or any of
14 it for all of the questions. I don't know if I could
15 specifically say or definitively say for all of them. But I
16 tried for most of them to at least see if it was something I
17 understood the question line of.

18 Q. Let me hand you your deposition transcript.

19 The reason I'm asking this is because throughout your
20 court papers, there is the suggestion that you weren't able to
21 read 35 to 40 percent of the test questions.

22 A. Correct.

23 THE COURT: Counsel, would you direct your opposing
24 counsel to what page and line.

25 MR. BURGOYNE: Yes. I'm sorry, Your Honor.

1 THE COURT: Sure.

2 MR. BURGOYNE: Page 136 of the transcript, lines 1
3 through 5.

4 MR. BERGER: Page 136?

5 MR. BURGOYNE: Page 136, yes.

6 BY MR. BURGOYNE:

7 Q. One more notebook. Right here.

8 And do you recall me asking you in the deposition: Does
9 that mean for 30 to 35 percent the questions, you just chose an
10 answer without reading any of the passage?

11 And what was your answer?

12 A. My answer was yes.

13 Q. And is that different than your answer today?

14 A. Yes, I -- in the instance that we're talking about fully
15 reading the passage or any of the passage, yes. Or reading
16 part of the passage, the question line. And also because we're
17 referring to a vignette and using the word "passage."

18 Q. I don't think I'll need to give this to you again. If I
19 do, I'll bring it back.

20 A. Okay.

21 Q. Let's transition to your second request for
22 accommodations.

23 And in support -- this is DX-4, Tab J.

24 A. Okay.

25 Q. And on this accommodation request, you relied upon your

1 migraines and your clotting disorder as additional disabilities
2 in support of your request for accommodations; is that correct?
3 A. This is the second one?
4 Q. Yeah. Your second request for accommodations.
5 A. Those were additional diagnoses that I included, yes.
6 Q. And that was June 2018?
7 A. Yes.
8 Q. And you submitted a fair amount of paper to NBME in
9 support of that accommodation request; is that correct? I
10 think you referenced, for example --
11 A. Yes.
12 Q. -- you got a letter from your school?
13 A. A letter of support, yes.
14 Q. And that was Dean Overton or Associate Dean Overton?
15 A. Again, I'm not sure what his title is for sure, but it's
16 Dr. Overton.
17 Q. You also submitted a document from a Dr. Ruekberg?
18 A. Yes.
19 Q. And then you also submitted a letter of support from a Dr.
20 Houtman?
21 A. Yes.
22 Q. And before we get into those documents, NBME granted some
23 accommodations for that request; is that correct?
24 A. They granted the separate room and the -- and extra break
25 time based on my migraines and DVT with post-thrombotic

1 syndrome and clotting disorder.

2 Q. And you were going to be allowed to test over two days?

3 A. Yes.

4 Q. And as a result of testing over two days, each testing
5 block was going to last how long?

6 A. I'm not sure. I don't know. I think -- I don't know if I
7 was ever told this, but I think maybe 30 minutes.

8 Q. And how long is the standard test block?

9 A. 60 minutes.

10 Q. So you would now be allowed to test over two days, but
11 only you would have to sit or stand for half an hour for each
12 test block?

13 A. Correct.

14 Q. And you were in a private room, and if you wanted to talk
15 aloud, you could talk aloud?

16 A. Yes.

17 Q. Look, if you would, please -- first of all, who is Dr.
18 Ruekberg?

19 A. My treating psychiatrist.

20 Q. And he's never conducted a diagnostic evaluation of you,
21 has he, similar to what you went through with Dr. Smith?

22 A. No.

23 Q. Look at Exhibit 64.

24 And I'm assuming Dr. Ruekberg's letter is in one of the
25 documents that were admitted this morning because you submitted

1 that letter to NBME in support of your second request for
2 accommodations?

3 A. I believe so.

4 Q. Exhibit 64 is a series of email messages that extends from
5 Ramsay -- the Bates number on the right -- 26 through 102.

6 Do you recall having extensive communications back and
7 forth with Dr. Ruekberg after you asked him to submit a letter
8 supporting your request for accommodations?

9 A. I'm sorry, you said through 102?

10 Q. Yes. Basically the entire exhibit consists of a series of
11 emails with attachments.

12 A. A lot of those are -- like I just flip to a page, like
13 page 73, and that's from my school. Maybe not. I'm sorry.
14 That's the heading. I'm sorry.

15 Okay. And what was your question? Sorry.

16 Q. My question was whether or not you and your lawyer worked
17 with Dr. Ruekberg over the course of several months to prepare
18 a letter that you then -- to prepare the letter that you then
19 sent to NBME?

20 MS. VARGAS: Objection, attorney-client privilege and
21 work product.

22 THE COURT: I'm going to sustain the question as it's
23 raised at this point in time. You can try to rephrase it.

24 MR. BURGOYNE: Sure.

25 BY MR. BURGOYNE:

1 Q. Look at the first two pages, actually, it's the first
2 three pages, Defendant's Exhibit 64.

3 A. Okay.

4 Q. And the first -- bottom there, is that an email from you
5 to Dr. Ruekberg in December 2017 thanking him for his help on
6 your request for accommodations?

7 A. Yes.

8 Q. And then the next three pages are sort of a three-page
9 document.

10 Is that an initial draft that Dr. Ruekberg prepared of his
11 letter?

12 A. Yes. It was a very early draft of like some of what his
13 thoughts were for including into his letter.

14 Q. At the bottom of this document, he says that in his
15 opinion, you should be given 50 percent additional testing time
16 over two days?

17 A. What page?

18 Q. That's 27.

19 A. Where?

20 Q. The very bottom. "In my professional opinion, therefore."

21 A. Okay.

22 Q. And he recommended 50 percent extra time?

23 A. Okay.

24 Q. In his draft; is that correct?

25 A. It looks like that.

1 Q. Then on the top of the next page, there's a paragraph that
2 reads: Even if the board does not find Jessica meets criteria
3 for accommodations for ADHD, in my professional opinion, the
4 board should approve Jessica for accommodation for reading and
5 writing learning disabilities.

6 A. Okay.

7 Q. Do you recall seeing that paragraph in one of his early
8 drafts?

9 A. Not specifically, but I remember talking about it, about
10 how he -- that even if you didn't want to provide
11 accommodations for ADHD, that I should definitely get them for
12 dyslexia.

13 Q. And when he submitted his final letter, he recommended
14 100 percent extra time; is that correct?

15 A. Yes.

16 Q. And when he submitted his final letter, this paragraph
17 wasn't in the final letter discussing the difference between
18 your ADHD and your LD?

19 A. Which paragraph?

20 Q. The paragraph that just read about even if the board does
21 not find Jessica meets criteria for accommodations for ADHD?

22 A. I don't know for sure if it is, but I would assume that
23 you're asking because it wasn't.

24 Q. All right. Then we go two more pages, and let's start
25 with page 32.

1 THE COURT: Counsel, we'll be adjourning the day at a
2 quarter of 5:00, so everyone knows.

3 MR. BURGOYNE: Okay.

4 BY MR. BURGOYNE:

5 Q. The document that says 32. And then you'll see there's a
6 series of highlighted text, some blue, some yellow, and the
7 three-page letter is now a five-page letter.

8 Is this a revised draft or comments that you sent to him?

9 A. I know it's a second draft or another draft. I don't know
10 if I sent it to him or if he sent it to me.

11 Q. Look at page 52. And do you see it says final draft at
12 the top. And it looks to be draft version number 4 under the
13 attachments. And you state here: Dear Dr. Ruekberg, sorry it
14 is so long. I had to add a lot of support to each of the
15 points in the NBME guidelines.

16 Do you recall providing substantive content to Dr.
17 Ruekberg for his letter?

18 A. I recall adding a lot of the details because he hadn't
19 included them, but it wasn't anything that he didn't already
20 know. And I wanted to make sure that the facts that he had in
21 there were correct and that they met the guidelines that are
22 published by the NBME, because after going through, I realized
23 that was important to meet those guidelines. So I wanted to
24 make sure that his letter met the guidelines, but also at any
25 point if he didn't agree with any of it, he wouldn't have

1 signed it or he would have taken it out.

2 Q. Look at page 71 for me. Do you see this is a document --
3 this document and the next page, 71 and 72, do you see a lot of
4 text has been redacted here?

5 MS. VARGAS: Objection, attorney-client privilege and
6 work product.

7 THE COURT: Not to this question. Your objection is
8 noted as overruled.

9 Do you notice that?

10 THE WITNESS: I do notice that.

11 THE COURT: Next question.

12 BY MR. BURGOYNE:

13 Q. Is this an email from your attorney to Dr. Ruekberg?

14 MS. VARGAS: Objection, attorney-client privilege and
15 work product.

16 THE COURT: I'll sustain the objection.

17 MR. BURGOYNE: Your Honor, I'm not asking about the
18 content, I'm just asking about --

19 BY MR. BURGOYNE:

20 Q. I'll ask this, who is Lawrence Berger?

21 A. He's one of my lawyers.

22 Q. Is this email from him?

23 THE COURT: If you know.

24 THE WITNESS: Yeah. It looks like that.

25 BY MR. BURGOYNE:

1 Q. Who is the email sent to?

2 A. Dr. Ruekberg.

3 Q. The next page, the entire page is redacted.

4 Who is this email from?

5 A. It looks like it's from Mr. Berger.

6 Q. And Mr. Berger is your lawyer.

7 And who was this email sent to?

8 A. It looks like Dr. Ruekberg.

9 Q. And you are a correct on the letter? You were copied on
10 the letter?

11 A. Yes.

12 Q. Then look at page 93 for me.

13 And this is content that's also been redacted. And it's
14 on the actual school letterhead.

15 Do you know why these redactions were made?

16 A. I do not.

17 Q. And then finally, on page 102, there's an additional email
18 with the entire text of the email redacted.

19 Is this an email from Lawrence Berger to Bruce Ruekberg?

20 MS. VARGAS: Objection, Your Honor. We continue to
21 object on attorney-client privilege and work product.

22 THE COURT: So noted.

23 These sections of the communications that have been
24 deleted, so to speak, are not in evidence. The communications
25 as to who they are will be allowed. All right?

1 Anything else?

2 MR. BURGOYNE: Final question for the day, Your Honor.

3 BY MR. BURGOYNE:

4 Q. Ms. Ramsay, are you able to tell us which parts of Dr.
5 Ruekberg's letter reflect your input versus your lawyer's input
6 versus Dr. Ruekberg's input?

7 MS. VARGAS: Objection, attorney-client privilege and
8 work product, to the extent it asks for input by attorneys.

9 THE COURT: Yes, but I don't think the question asked
10 that. It asked as to which part she had input in.

11 Can you answer that question yes or no, ma'am?

12 THE WITNESS: I can answer it.

13 THE COURT: You can answer it?

14 THE WITNESS: I can answer with I don't know. I
15 couldn't tell you which parts were, like, things I edited and
16 which parts Dr. Ruekberg wrote at this time.

17 MR. BURGOYNE: Okay. I have no further questions for
18 today, Your Honor.

19 THE COURT: Very well.

20 Counsel, just before we adjourn, how long do you
21 anticipate this to go? I only had tomorrow blocked off for
22 further testimony, and at this pace that we're going at today,
23 I don't know how much further you have.

24 Don't everybody speak at once.

25 MR. BURGOYNE: I suppose I ought to speak first, Your

1 Honor, since I've got to wrap up Ms. Ramsay and then they've
2 got rebuttal.

3 So I would guess I probably have another half hour to
4 45 minutes with Ms. Ramsay.

5 THE COURT: And you'll have redirect to rehabilitate
6 your witness and potentially there's some recross.

7 How many other witnesses do you propose calling?

8 MS. VARGAS: We only intend to call one other witness,
9 Your Honor.

10 THE COURT: And that witness will be approximately how
11 long?

12 MS. VARGAS: That's Dr. Smith, so I would imagine it
13 would be fairly lengthy.

14 THE COURT: And then after Dr. Smith testifies, how
15 long is, if any, defense? We're not even getting into cross
16 examination at this juncture.

17 MR. BURGOYNE: For us, Your Honor, one witness. Ms.
18 Farmer has already submitted a declaration. If we let that be
19 her testimony, I could strike her. And then we've got the two
20 external reviewers who reviewed the documentation, so...

21 MS. VARGAS: Your Honor, in that case --

22 MR. BURGOYNE: And one other witness, I'm sorry, Your
23 Honor, one other witness.

24 THE COURT: Very well. Yes, ma'am?

25 MS. VARGAS: We had understood in communication

1 between counsel in advance that defense would be calling Dr.
2 Farmer. If defense is not calling Dr. Farmer, we would.

3 THE COURT: You will be.

4 MR. BURGOYNE: I'm happy to call her, Your Honor. I
5 don't have a problem with that.

6 THE COURT: You try your own cases in front of me,
7 Counsel.

8 All right. We'll reconvene tomorrow at 9:30, and I'll
9 let you know as to the remainder of this week if at all. All
10 right?

11 MR. BURGOYNE: Your Honor, one point of clarification.
12 One of our experts needs to -- he understood originally it was
13 going to be a one-day hearing. He's got to get back to New
14 York.

15 THE COURT: How did he understand it was going to be a
16 one-day hearing?

17 MR. BURGOYNE: That's what the order said. And then
18 we called up and learned after the fact that it in fact was on
19 the docket for two. So he's got to be back in New York. He's
20 on a 12:00 train.

21 Are you okay if plaintiffs are okay with us taking a
22 witness out of order?

23 THE COURT: I don't have any problems with it at all.
24 How long do you anticipate it?

25 MR. BURGOYNE: Hour. We'll try to tighten it up.

1 THE COURT: All right. We'll see. 9:30 tomorrow
2 morning. And we're adjourned.

3 (Proceedings concluded at 4:47 p.m.)
4
5
6

7 I certify that the foregoing is a correct transcript
8 from the record of proceedings in the above-entitled matter.

9
10  _____

11 Ann Marie Mitchell, CRR, RDR, RMR
12 Official Court Reporter
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JESSICA RAMSAY

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ADMITTED PAGE

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